



Combating the Financing of Terrorism: Rethinking Strategies for Success

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Abstract. *Combating the financing of terrorism (CFT) is a core pillar of the fight against terrorism. An effective CFT can play investigative, analytical, deterrent and even preventive roles. Terrorists fund themselves from a great variety of sources. Especially since 9/11, many instruments giving power to governments to counter the financing of terrorism have been adopted. However, the achievements so far are very modest and this combat is very far from being accepted as successful. Our strategies, by addressing the challenges confronted, need to be re-examined and adapted in accordance with the new conditions so as to be effectively implemented in practice. Undoubtedly, instead of rhetorical collaboration, those strategies require real international and bilateral cooperation in the fields of intelligence sharing, police and judicial cooperation.*

Keywords. Counter-terrorism, Combating the financing of terrorism, United Nations, international instruments, listing of sources of funds

Introduction

The attacks of 9/11 triggered the global unification in combating the financing of terrorism in theory, but filling the gap between rhetoric and reality is of crucial importance.

Intrinsically, to commit a terrorist attack—even a large-scale one—does not require a large amount of funds. For instance the attacks of 9/11 cost Al-Qaeda somewhere in the range of \$400,000 to \$500,000.¹ Due to their relatively low operational cost, the financial aspects of

¹ John Roth, Douglas Greeburg, Serena Wille, National Commission on Terrorist Attacks Upon the United States, Monograph on Terrorist Financing, Staff Report to the Commission, on-line available, http://www.9-11commission.gov/staff_statements/911_TerrFin_Monograph.pdf, p. 3, (last accessed on 21 January 2007). The cost of the Istanbul bombings in 2003 was less than \$40,000. The Africa Embassy

terrorism cannot be the sole focus to stop the perpetration of future acts of terrorism. (Biersteker/Eckert, 2007a: 12)² However, limiting the resources available to terrorist groups by effective financial control may prevent some attacks from taking place; stopping the transfer of even small amounts of money may save lives, or at least can reduce the possible impact of attacks which cannot be prevented. Indeed, besides the operational costs terrorist groups need funds for “planning, recruitment, procurement, preparation, delivery of materials, communications, persuasion, propaganda, incitement, infrastructure of safe houses/sleeper cells, reconnaissance of targets, and assault on targets”.³ In addition, CFT can provide assistance in investigating how a terrorist attack has been carried out, identifying and detaining other members and supporters of the group having committed the act of terrorism, and better understanding the group’s modus operandi and organizational structure. In short, “financial controls can perform preventive, deterrent, investigative, and analytical functions, all of which are vital for curtailing acts of terrorism.” (Biersteker/Eckert 2007a:3)⁴ In other words CFT constitutes the decisive and core part of the comprehensive fight against terrorism.

The term “financing of terrorism” is defined broadly by the World Bank and International Monetary Fund (IMF) as “the financial support, in any form, of terrorism or of those who encourage, plan or engage in it.”⁵ However, as the international community has not agreed yet on a definition of “terrorism”, in terms of the provision of effective international combat, the

bombings are estimated to have cost less than \$50,000. The operational costs of 2004 Madrid bombings were initially estimated to have been only \$10,000 although the Spanish Government claimed it was above \$ 60,000. See for more information Biersteker/Eckert, 2007a:10-12. Budget for a suicide bombing is about \$1,500. “Finance and Economics: Follow the money”, *The Economist*, January 1, 2002, 87.

² It is stressed in the Preamble of the *The International Convention for the Suppression of Financing of Terrorism* that “the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain”.

³ Rudner 2006: 32-58; Third Report of Monitoring Team: 15. For instance, while Al-Qaeda spends about 10% of its income on operational costs, the rest of its incomes goes to the cost of administering and maintaining the organization, including the cost of operating and maintaining international network of cells. See Biersteker/Eckert, 2007a: 24, footnote 11.

⁴ “Last summer al-Qaida nearly executed what would have been its most devastating terror attack since 9/11. British authorities foiled the liquid explosive aviation plot, thanks in large part to critical financial intelligence, and quickly announced plans to increase the use of financial intelligence tools to disrupt terrorist operations.” See. Matthew Levitt, Blocking Terror Finances, 3 May 2007, <http://www.washingtoninstitute.org/templateC06.php?CID=1050>. The law enforcement established the first links between the hijackers and other conspirators after 9/11 thanks to financial information. See. Dennis Lormel, Testimony before the Senate Judiciary Committee, Subcommittee on Technology, Terrorism, and Government Information, 9 October 2002, available on:

<http://corprisk.timberlakepublishing.com/files> (last accessed on 17 March 2007). Financial intelligence played important role following the July 7 attacks in London and the March 11 attacks in Madrid, among others as well. (Matthew 2007). These examples demonstrate either preventive or investigative role of following the money in CFT.

⁵ “Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism”, (Washington, D.C.: The World Bank and the IMF, 2003) This term was used in the international legal meaning for the first time in the UN General Assembly’s Seminal Declaration on Measures to Eliminate International Terrorism in 1994. (Bantekas 2003: 316)

definition of financing of terrorism does not make any sense. In this paper, the term “terrorism” refers to deliberate acts of violence against civilian targets based on political, religious or ideological beliefs, with the aim of intimidating and coercing individuals and states.

This paper aims to evaluate the effectiveness of current international CFT efforts, paying particular attention to initiatives undertaken by the UN and FATF. To this aim, Chapter I briefly examines the main terrorist financing sources, ways of movement of funds and their evolution. Chapter II sets out the main international tools used and initiatives undertaken in CFT. The paper reaches a conclusion regarding the effectiveness of the CFT efforts by illustrating some of the achievements. Chapter IV outlines some of the main challenges confronted in the CFT, and Chapter V suggests some policy recommendations to increasing the effectiveness of global CFT efforts.

Main Terrorist Funding Sources

While international organizations and states are increasing their CFT efforts, which do not yet include sufficiently innovative strategies, terrorist organizations are adapting themselves easily to new funding techniques and sources. (Napoleoni 2006: 60-61)

Terrorism is funded from various sources and in many different ways. The methods and sources used vary from country to country or region to region as well as terrorist groups to terrorist groups. Especially in the past, one way of funding terrorism was the support provided by states. However, as a result of the constant response of the international community, especially of UNSC resolutions authorizing economic sanctions used to persuade state sponsors, such as Libya and Sudan, to stop their support for terrorism, state sponsorship of terrorism has diminished significantly. (Hardoin/Weichhardt 2003:11; Clunan 2006-7:574; Bantekas 2003:316) ⁶

With the decline of the state sponsorship, instead of decreasing their activities, terrorists turned towards and relied increasingly on private financing. Bantekas classifies, as this paper does, the

⁶ Due to the undeniable involvement of Libya in the Lockerbie bombing, the UNSC called on Libya to cease promptly all assistance to terrorist groups by concrete actions. Following the attempts of terrorists to murder the Egyptian president in Ethiopia, the UNSC called on the Sudanese government to refrain from supporting those terrorists. The UNSC used the term “terrorist financing” for the first time in Res. 1269 in 1999. But the aforementioned calls for it “clearly implicating state entities directly in such financing by acts and omissions such as sheltering, facilitating, funding, and failure to adopt suppressive measures.” This can be seen in the Al-Qaeda-Taliban regime relationship. Despite the fact that Al-Qaeda did not rely financially on the Taliban regime, it was dependent on its consent for the stationing and training of terrorists on the Afghan soil. (Bantekas, 2003: 316. “From its earliest days as part of the mujahedeen’s anti-Soviet effort in Afghanistan, it (Al-Qaeda) financed itself from a variety of sources—charitable contribution, direct solicitations, and state support—all with tacit and direct support of major states (including the United States). After the end of the Afghan conflict in the early 1990s, it adapted its strategy to a more diversified set of sources, continuing many of the previous sources (with the important exception of US government financial and logistical support) and adding legitimate and illegitimate business activities. With its return to Afghanistan in 1996, Al-Qaeda once again developed a mutually advantageous relationship with a state sponsor—this time with the Taliban regime ...” (Biersteker/Eckert 2007c:5)

private terrorism funding into two categories on the basis of their origin: illegal funds and legitimate funds. (Bantekas 2003:316; Clunan 2006-7:575; Samy 2006: 5-6)

The second main source of financing comes from a great variety of criminal actions, such as smuggling, almost all kinds of fraud,⁷ theft, stolen cars, drug trafficking, kidnapping,⁸ robbery,⁹ extortion, petty crime, ID theft, money laundering, and smuggling of money.¹⁰

Besides illegal funding activities, legal sources are also being used for the financing of terrorism. (Hardoin/Weichhardt 2003:11) Legitimate businesses are used by terrorist groups and their supporters either to raise funds in support of logistic and operational requirements or to cover some activities of terrorist groups and as a front for money laundering. (Chandler 2005: 3) The abuse of some charities constitutes another legitimate terrorist funding source.¹¹ Possible indirect fund transfers to terrorists from local authorities under the umbrella of legitimate business, door-to-door requests, personal donations, cultural events indirectly organized by terrorist groups, investments in stocks, real estate, sale of publications, appeals to wealthy members of the community, collection of membership dues can also be exemplified for the financing of terrorism in the sense of legitimate funding.

In order to move funds, terrorists have been using formal banking systems. As a result of the considerable steps that have been taken to supervise and monitor the money transactions through formal banking, this kind of movement of funds has been declining. However, especially the existence of off-shore financial centres with lax regulations still makes the formal banking system vulnerable to facilitation of the movement of funds across international borders. (Samy 2006:9) Besides using the formal banking system, especially through proxy account holders, terrorists predominantly have been using informal value transfer (IVTs) methods, such as *hawala*.¹² Another method of moving money, heavily used recently by terrorists, as it is seen as the most secure way of avoiding detection, is the utilization of *cash couriers*. There are numerous ways of

⁷ In his book *Illicit*, Moisés Naim argues that the terrorists behind the 1993 World Trade Centre bombing sold counterfeit t-shirts on New York City's Broadway to raise money, the terrorists behind the Madrid train bombings in 2004 sold counterfeited CDs and trafficked drugs to support their activities. Hezbollah, the Irish Republican Army, and ETA generate money through counterfeiting scams. (Kaplan, 2006)

⁸ Salafist Group for Preaching and Combat kidnapped European tourists in Algeria in 2003 and it released some of them for a ransom \$ 6.5 million, paid by Germany. See Craig S. Smith, "Tunisia is feared to be Islamist base for Algerian group (GSCP)", *International Herald Tribune*, 20 February, 2007, p. 5.

⁹ Although robbery is rare in financing of terrorism, it was the sole means of funding for the Greek November 17 organization. (Bantekas, 2003, 319)

¹⁰ Mark Rice Oxly, "Why terror financing is so tough to track down?", 8 March 2006, available on <http://www.csmonitor.com/2006/0308/p04s01-woeu.html> (last accessed on 13 March 2007)

¹¹ Lee Wolosky, a former National Security Council official, explains the situation very well: "There are nefarious charities and there are good charities with nefarious people working for them". (Kaplan, 2006)

¹² A typical hawala (transfer) system works in as follows: if a poor immigrant Pakistani worker (remitter) in the UAE wants to send money to Pakistan with a low cost and fast delivery, he goes to an intermediary (hawaladar) to organize the transfer; he pays in dollars or other convertible currency; the hawaladar in the UAE contacts a counterpart in Pakistan, who pays in rupees to remitter's family or other beneficiary. (Looney 2003:164)

travelling with large quantities of cash without raising suspicion at the border check points. In fact terrorists do not necessarily have to cross borders. As was highlighted by the London attacks, terrorists have increasingly used domestic sources in planning and funding attacks.¹³ (Kaplan 2007; Napoleoni 2006:6) Terrorists' continuous mutation, which generally keeps them a step ahead of the states authorities in raising and transferring money makes the CFT efforts to track the funds extremely difficult. (Napoleoni 2006:1)

International Initiatives to Counter the Financing of Terrorism

To evaluate the effectiveness of multilateral counter-terrorist financing cooperation, this paper briefly takes a look at the evolution and development of some international initiatives in this field. There are many legal instruments and tools to ensure that governments have the necessary framework on which to base their measures to counter the financing of terrorism.

The first concrete step taken by the UN in October 1999 was the adoption of UNSCR 1267.¹⁴ By this Resolution, the UNSC basically called upon the Taliban regime to turn Osama bin Laden over without further delay because of his indictment in the United States for the bombings of the US Embassies in Kenya and Tanzania in 1998, and called on all member states to freeze funds and other financial resources of the Taliban and Al-Qaeda, and associated entities and individuals. It also established a Sanctions Committee,¹⁵ to monitor and oversee the implementation of sanctions on Taliban-controlled Afghanistan. Pursuant to its mandate, the Sanctions Committee created and maintains a Consolidated List.¹⁶ The list, containing approximately 500 names together with de-listed individuals and entities, is the basis of the implementation of the sanctions against the Taliban and Al-Qaeda.¹⁷

¹³ Napoleoni argues that "the structure of terrorism financing is no longer trans-national, but deeply rooted in individual countries." (Napoleoni, 2006: 1)

¹⁴ "The sanction regime has been modified and strengthened by subsequent resolutions, including resolution 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004) and 1612 (2005), so that the sanctions now cover individuals and entities associated with Al-Qaida, Osama bin Laden and/or The Taliban wherever located." See <http://www.un.org/Docs/sc/committees/General.Information.pdf> (last accessed on 9 February 2007)

¹⁵ This Committee was known 1267 Committee but with the press release (SC/7865) on 4 September 2003, it declared its name as "The Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities" and it also stated that it could also be referred to in shortened form as: "Al-Qaida and Taliban Sanctions Committee".

¹⁶ "General Information on the Work of the Committee", available on <http://www.un.org/Docs/sc/committees/General.Information.pdf> (last accessed on 9 February 2007)

¹⁷ As it is an important foundation for the CFT, and for a better evaluation of this procedure, it is necessary to know about the process of the listing and de-listing procedures. Basically the addition procedure to the list works as follows: When a state suggests a name, believing the person or entity is a member of Al-Qaeda or the Taliban, the Chairman of the Committee informs the member states about the proposal; if no member state objects to the addition of the proposed name, usually within the 48 hours silence period, this name is considered accepted and added to the list. The Sanctions Committee accepted a de-listing procedure in August 2002. According to that procedure, if someone on the list wants to be de-listed,

Although it is less known, the UNSC actually became actively involved in the global effort against Al-Qaeda nearly two years before the attack of 9/11. After the passage of UNSCR 1267, The International Convention for the Suppression of Financing of Terrorism was adopted by the UN General Assembly in December 1999.¹⁸ This Convention obliges its states parties to take appropriate measures for the identification, detection, freezing, or seizure of any terrorist-related funds as well as proceeds derived from the offences stated in Article 2. It also creates the offence of providing or collecting of funds that are to be used to carry out any terrorist act. However, the Convention has no any international enforcement mechanisms attached to it and applies only to its states parties. (McCulloch/Pickering 2005:476; Bantekas 2003: 325)

In the aftermath of 9/11, the international approach to CFT changed considerably and international initiatives have also been extended. Two weeks later, on 28 September 2001, under Chapter VII of the UN Charter, “expressing its clear intention to do something significant to stem terrorist’s access to financial support”, the UNSC unanimously adopted UNSCR 1373 which addresses directly the financing of terrorism. The Resolution, legally binding on all UN Member States, requires all members to suppress the financing of terrorism, to criminalize active or passive support for terrorists prior to a terrorist act, freeze funds expeditiously, share operational information, take necessary steps to prevent the commission of terrorist acts, deny safe haven to financiers, planners, and supporters, and provide technical assistance to enhance multilateral cooperation in that field. The resolution also calls upon Member States to sign the UN Convention for the Suppression of the Financing of Terrorism and establishes an “innovative process to implement the terms of the resolutions under the guidance of the Counter-Terrorism Committee (CTC)” (Joyner 2004: 240-241; Biersteker/Eckert 2007b: 4-5; Oudrat 2004:162) The CTC’s ultimate aim is to increase the ability of the States to fight against terrorism. Resolution 1373 targets all terrorists and terrorist organizations. But this sanctions regime does not contain any listing or de-listing procedure: the list making has been left to the Member States.

Another important and influential inter-governmental “policy-making body”, dealing with CFT, is the OECD’s Financial Action Task Force (FATF), created by the G-7 in 1989 and comprising 33 Member States. The aim of the FATF was to examine the money laundering techniques and trends, review the action which had already been taken at a national or international level, and set out the measures that still needed to be taken to combat money laundering. Less than one year after its establishment, a report containing a set of 40 Recommendations, providing a comprehensive plan of action needed to fight against money laundering, was issued by the FATF. In order to promote the national and international policies to combat money laundering, the FATF has continued to examine the methods used to launder criminal proceeds and has completed two rounds of mutual evaluations of its member countries and jurisdictions, and a third round of mutual evaluations has been commenced. It began a

he/she must apply to the government of his/her residence and/or citizenship. If that government admits the request, it should firstly bilaterally consult to the state which originally requested the designation. The aim is that both states should reach an agreement either to keep the name on the list or to submit a joint request for de-listing to the Committee. All updates of the list can be decided by the members of the Sanctions Committee through consensus. (Kruse 2003: 76.)

¹⁸ The Convention entered into force on 10 April 2002. As of 11 September 2001 only four countries had ratified the Convention, but 156 states were party to the Convention as of 19 March 2007.

campaign of “naming and shaming” jurisdictions that did not cooperate in the global counter money laundering. This campaign prompted many of those named to change their legislation in order to be removed from the list. (Clunan 2006-7: 577)¹⁹ After 9/11, moving beyond its focus on money laundering by the adoption of 9 Special Recommendations on terrorist financing, the FATF added the development of standards in the CFT to its mission.²⁰ The FATF’s recommendations are seen as “extremely persuasive soft law” with effect not only for its member states, but also non-member states. (Bantekas 2003: 319)

The IMF and World Bank developed technical assistance programs for countries to ensure compliance with the FATF’s anti-money laundering and CFT recommendations, as well as the inclusion of anti-money laundering considerations in their country evaluations.²¹ (Clunan 2006-7: 579)

Beyond these international activities some regional and sub-regional organizations, such as the EU, the African Union, the Gulf Cooperation Council, the South Asian Association for Regional Cooperation, the Association of Southeast Asian Nations and the Pacific Islands Forum, the Egmont Group have also taken an active role in CFT by endorsing UN and FATF measures. (Bantekas 2003:319)

Evaluation of the Effectiveness of the International Initiatives

In order to assess the international CFT initiatives, some indicators should be taken into account: legal compliance, the number of states that have signed the UN convention, financial intelligence units (FIUs) created, increased reporting, or international bodies joined, the amount of national and global asset freezes, technical assistance programs run and more importantly the degree to which states have changed domestic policies to be in compliance with the new international standards. (Clunan 2006-7: 578; Biersteker 2007b:16)

In terms of legal compliance, most countries have shown important progress on criminalizing the wilful provision of funds for terrorism and providing a legal basis for the expeditious freezing of the funds of terrorist organizations and individuals. Only three UN Member States had a legal basis to freeze funds quickly by 2004.²² However by late 2005, the act of financing of terrorism was criminalized in 123 UN Member States. Most states have reported changes in their administration to deal with terrorist financing; FIUs or other intra-governmental mechanisms to

¹⁹ As of 13 October 2006, there is no country in the “Non-Cooperative Countries and Territories” list. <http://www.fatf-gafi.org> (last accessed on 19 March 2007) This situation has been assessed by some as a challenge of “lack of teeth” of the FATF system, by alleging the difficulty of being convinced that all of the countries have managed to avoid the list of shame in practice. See. “*Special Report: looking in the wrong places*”, The Economist, October 20th 2005, 82.

²⁰ For those 9 special recommendations see <http://www.fatf-gafi.org> (last accessed on 9 February 2007)

²¹ As of late 2005 The IMF and World Bank had carried out more than 150 assessments of member country compliance and had provided technical assistance in more than 125 countries. (Biersteker 2007b: 13-14)

²² Testimony by Assistance Secretary of State for Economic and Business Affairs E. Anthony Wayne Before the Senate Committee on Banking, Housing, and Urban Affairs, “*State Department Role in Combating the Financing of Terrorism*”, 4 April 2006.

address the issue have been established for the first time in many countries. The total number of global member FIUs, informal trans-governmental networks to share information regarding money laundering and terrorist financing reached 102 in 2006.²³ Many countries have introduced new reporting procedures for banks and financial institutions, particularly “know-your-customer” provisions and reports on suspicious transactions. But few states have introduced measures to regulate charities, other than registration. (Biersteker, 2007b: 16-18)

The World Bank and the IMF agreed to provide technical assistance to ensure compliance with the FATF’s recommendations and inclusion of anti-money laundering considerations in their country evaluations. (Clunan 2006-7:579)²⁴

Regarding the enforcement, as it is declared by Wayne, approximately \$147.4 million had been frozen internationally and \$65 million seized in assets internationally as of 13 July 2005.²⁵ Most of this money belonged to the Taliban regime and some \$59 million seemed to be associated directly with Al-Qaeda. (Comras 2005: 8)²⁶ According to the UN High-level Panel Report,²⁷ “attempts to address the problem of terrorist financing have been inadequate. While in the three months after 11 September 2001 \$112 million in alleged terrorist funds were frozen, only \$4 million were frozen in the two years that followed. Seized funds represent only a small fraction of the total funds available to terrorist organizations. While many states have insufficient anti-money laundering laws and technical capacity, the evasion techniques of terrorists are highly developed and many terrorist funds have a legal origin and are hard to regulate.”

²³ Testimony by E. Anthony Wayne, April 2006.

²⁴ See “Twelve-Month Pilot Project of Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Assessments”, IMF and the World Bank Joint Report on the Review of the Pilot Project, 10 March 2004) available on <http://www.imf.org/external/np/pp/eng/2006/041806r.pdf> (last accessed on 10 March 2007) In this report, it was reported that the compliance with the FATF’s recommendations on terrorist financing was weakest in lower- and middle-income countries, and this compliance was much less for the more domestically intrusive and costly ones.

²⁵ Testimony by Assistance Secretary of State for Economic and Business Affairs E. Anthony Wayne Before the Senate Committee on Banking, Housing, and Urban Affairs, “Money Laundering and Terrorist Financing in the Middle East and South Asia”, 13 July 2005. This is the only available data concerning the amount of money, because while states have been reporting to CTC, as they are not obliged to do, they have not specified the amounts. (Third Report of the Monitoring Team, 14)

²⁶ There is no accurate information about the total amount of money terrorist organizations hold. Loretta Napoleoni, author of “Modern Jihad: Tracing the Dollars Behind the Terror Network,” estimates \$ 500 billion under terrorist organizations control, the UN estimates \$200 billion flows through informal banking systems, however a small amount of that is terrorist-related. The World Bank and IMF see the total amount at tens of billions of dollars. See for these figures David R. Francis, “The War on Terror Money”, 08.04.2004, available on

<http://www.csmonitor.com/2004/0408/p14s02-wogi.html?s=wdep> (last accessed 13.03.2007) On the other hand, according to a recent report, Osama bin Laden himself stated that current terrorist operations in Iraq were costing them about \$500,000 per month. (Chandler 2005: 2)

²⁷ Report of the High-level Panel on Threats, Challenges and Change, A More Secure World, Our Shared Responsibility, UN Document 1/59/656, on 2 December 2004, p. 47 available at <http://www.un.org/secureworld/report.pdf>

With regard to the sanctions imposed by the UNSC and the work of its CTC, as it was noted by the High-level Panel, although those initiatives have played an important role in ending the support of some states for terrorism and activating other states in CFT, the sanctions against Al-Qaeda and the Taliban are still waiting for effective support and implementation from Member States.

Throughout the world there has been important progress in domestic policies on the global willingness at the declaratory level to do something on CFT. However, material progress to date has been relatively modest and superficial. (Clunan 2006-7:579; Biersteker 2007b:20)²⁸

Main Challenges

Although the above-mentioned multilateral initiatives to some extent stimulate changes on the national level, still there have been some challenges to further progress and even some weakening of the current efforts in CFT through multilateral efforts.

The first challenge to the effective CFT cooperation is the existence of ongoing state capacity limitations to apply the global counter-terrorist financing standards. Although the capacity-building and technical assistance initiatives of the UN CTC and some other bodies have been addressing this and some progress has been achieved on the general capacity, there are still many gaps regarding some specific requirements of the UN and FATF measures. (Biersteker 2007b: 21; Oudraat 2004:163) Despite the fact that many states accept the global legal standards, the lack of political will to implement those standards in some states is the second constraint to the effectiveness of multilateral efforts.

The third challenge relates to human rights concerns about the existing UN listing and de-listing procedures. These concerns have caused a general perception that the current procedures are not adequately “fair and clear”. (Biersteker 2007b: 21-22)²⁹ There are some questions

²⁸ “Efforts to combat the financing of terrorism are costly and ineffective” See. *“Leaders: the lost trail; Counter-terrorism”*, *The Economist*, October 22 th, 2005, 13.

²⁹ Some concerns regarding the listing and de-listing procedures stated in the Report of the High-level Panel on Threats, Challenges and Change in December 2004 as follows: “The initial response by the Security Council to the terrorist attacks of 11 September 2001 was swift and impressive. ... However, the Security Council must proceed with caution. The way entities or individuals are added to the terrorist list maintained by the Council and the absence of review or appeal for those listed raise serious accountability issues and possibly violate fundamental human rights norms and conventions. The Al-Qaeda and Taliban Sanctions Committee should institute a process for reviewing the cases of individuals and institutions claiming to have been wrongly placed or retained on its watch lists.” The UN General Assembly in its September 2005 World Summit Outcome document called on the UNSC “to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and removing them, as well as for granting humanitarian exceptions.” As a result of the perception of unfairness the implementation of sanctions has generated public oppositions in some countries such as Sweden, New Zealand and Saudi Arabia; Germany and Sweden clearly indicated their unwillingness regarding adding names to the lists; more than 50 Member States expressed their concerns about the lack of due process and transparency on the listing and de-listing procedures. See Third and Fourth Reports of the 1267 Monitoring Team available at

regarding these procedures awaiting to be answered such as: “What happens if an individual or entity is wrongly listed? How are their rights protected?” in the framework of the basic universal human rights and democratic principles. Instead of the “*innocent until proven guilty*” basic criminal law principle, this procedure changes it and follows the “*guilty until proven innocent*” idea.

Some legal concerns arising from the UN listing and de-listing procedures have been put forward in a White Paper³⁰ as follows. Firstly, since only Member States may inform and usually do not notify their listed citizens, it is not possible to accept this notification as adequate as it is vital to procedural fairness. Indeed individuals or entities should be aware of either the reasons for their designation or the procedures for applying exemptions and de-listing. The second concern is the issue of accessibility of individuals to the process. The de-listing procedure is based on the assumption that states will protect the interests of their citizens accordingly, there is always a need for individuals listed to obtain the support of a Member State to negotiate and examine their case on a bilateral basis. However, in the case of unwillingness of the state to represent the interest of its citizen, or if the petition is not sent to the Committee by any state, the de-listing process will be inaccessible to the individual and his/her rights to direct appeal of designation will not be protected. The third concern is the denial of the right to a fair trial or hearing prior to a designation or listing due to the fact that individuals or entities do not have any chance to defend themselves before the imposition of a sanction. Even after the imposition of a sanction, according to the Paper, because of the existing hierarchy and the special position of the UN and especially that of the UNSC (granted by article 103 of UN Charter), one can witness an inter-organizational hierarchy and the reluctance of some European judgments (i.e. the European Court of First Instance of the European Communities) to assess UN practices in a substantive way. Individuals can be listed with redacted statements of their case based on classified intelligence, which is not given to other Member States, the contents of the statements of the case are never made public, and a criminal conviction or indictment is not a prerequisite for addition to the list. The fourth concern is the denial of the right to effective remedy. This means that if the state petitioned by the citizen refuses to initiate the process for de-listing, there is no opportunity left for the individual. The lack of a periodic review of the listing is also another important concern arising from these procedures.³¹

<http://www.un.org/Docs/sc/committees/1267/1267mg.htm> With its report dated 16 January 2006, named Update Report No.5 The 1267 (Al-Qaeda and the 1540 (WMD) Sanctions Committee, UNSC expressed that The Committee should address the complaints about the lack of due process in designating individuals to the consolidated list and de-listing procedures.

³⁰ See for more detailed explanations “Strengthening Targeted Sanctions Through Fair and Clear Procedures”, White Paper prepared by the Watson Institute Targeted Sanctions Project Brown University and sponsored by Switzerland, Germany and Sweden Governments, 30 March 2006.

³¹ It is not possible to accept the justification invoked by some Member States to deny the right to a fair trial or hearing, that the designation of individuals or entities are not criminal charges or penalties, only administrative decisions. Indeed many effects of a wrong designation, such as significant effects on the families of listed individuals, on the employees of targeted companies, more significantly on the reputation of individuals and entities, are not less harmful than penalties imposed in criminal proceedings. Overall, these human rights concerns may potentially lead to the unwillingness of individual states to contribute to the global efforts to maintain the freeze on the assets of listed individuals and groups or

Beyond the legal challenges there are some implementation concerns arising from the listing procedure. To implement freezing actions some countries need further evidentiary requirements. The lack of sufficient identifiers is another concern hampering the implementation and enforcement of sanctions and affecting the rights of innocent people with names similar to those listed.³² Most countries have failed to take steps against business and other income-producing assets that are in the hands of identified Al-Qaeda supporters. Another important problem relates to implementation of these sanctions on the businesses and assets that are owned and administered jointly with non-designated persons. They cannot also be implemented either on those Al-Qaeda members who are not included on the list, although many of them are well-known in some countries. (Comras 2005:10)

Biersteker argues that the variation in the capacity of private sector banks and financial institutions around the world is another challenge to the effectiveness of the multilateral initiatives. Since larger financial institutions are better able to comply and manage the additional costs associated with compliance with reporting on terrorist funding, they have more competitive advantages than the smaller ones.³³ Another particular challenge “upon the UN-led efforts to suppress terrorist financing is the capacity and willingness of Member States to prepare the numerous reports to UN bodies that they are increasingly asked to provide ... Small Member States from the developing world with limited institutional capacity often have great difficulty keeping up with the demands of successive rounds of reporting.” The sixth and final challenge which is specific to the UN is the institutional lassitude and bureaucratic delay within the organization. (Biersteker, 2007b: 24-27)

Recommendations for Further Progress

There has not been any fundamental change in the response to terrorist funding since 9/11 and there have not been significant efforts to reassess the policy. National and international initiatives still focus more on the formal financial sector, without taking into consideration the fact that terrorists have heavily turned to criminal activities for raising money, and to informal finance systems and cash couriers for moving funds. Bearing in mind terrorist organizations are changing

adding new persons or companies to the lists. Additionally these concerns might undermine the whole credibility of the central tenets of UN system, especially of those related to human rights and basic individual freedoms.

³² Third Report of Monitoring Team,11. See one of the names with no sufficient identifiers in the list: “T.I.A.122.01. *NAME: 1: ABDUL MANAN 2: na 3: na 4: na Title 1: Mr Title 2: Mawlawi Designation: Commercial Attache, Taliban Embassy, Abu Dhabi DOB: na POB: na *Good quality a.k.a.: na Low quality a.k.a.: na *Nationality: Afghan Pass. no.: na National identification no.: na Address: na *Listed on: 25 Jan. 2001 *Other information: na” <http://www.un.org/Docs/sc/committees/1267/pdflist> (accessed on 19 March 2007)

³³ The compliance costs for financial institutions are very high. It is estimated that to implement a global screening programme including regularly checking customer names of those who are in UN or US lists costs each mid-tier bank £3m-4m (\$5m-6m) in Britain. According to the British Bankers’ Association estimations, banks in Britain spend approximately £250 m each year to comply with anti-terror financing and money laundering regulations. For more figures see “Special Reports: looking in wrong places”, *The Economist*, 22 October 2005, 82.

their structure and financing methods, international strategies for CFT ought to be adapted accordingly. For instance Al-Qaeda “has learned to adapt, to transform itself in creative ways, and to take advantage of globalization in ways that state-sponsored defenses have not even begun to consider. No state, even the most powerful, can deal with the trans-national threat of terrorism by relying on national means alone.” (Biersteker, 2007c: 7-8, 16)³⁴

The majority of alternative remittance systems, such as *hawala* or other international value transfer systems (IVTS), perform many important social and global developmental roles and they are well-functioning beside the formal banking system in some countries. By over-reacting policies, inappropriate regulation resulting in attempts to control the IVTS can lead to some significant inadvertent consequences as was seen from the experience with al-Barakaat in Somalia. (Biersteker, 2007c: 8)³⁵ Alternative remittance systems, seen as one of the ways of moving funds in terrorist financing, should be regulated in a manner which “is proportionate to risk and appropriate to particular socio-economic environments”. Those systems should be registered and required to keep enough records. Nevertheless while enabling this, instead of focusing on the centralization of data, the primary focus should be on a traceability of transactions that is flexible enough so as not to push terrorists underground and not to make suspicious activities harder to detect. (Samy 2006: 8; Biersteker, 2007c: 18)³⁶

Similar to the IVTS, the overwhelming majority of charities are completely legitimate and carry out very important social and developmental functions. Today, although charitable activities and the diversion of funds from charitable organizations are still seen as a principal source of financing of terrorism, there is little evidence proving that they are still performing this function to the same significant level. Blanket condemnation of charities providing social welfare services is not a suitable strategy. As the possible or real abuse of charities, to some extent, is one of the main funding sources of Al-Qaeda and its affiliates there is a need for a different strategy, distinguishing the financing of humanitarian charitable networks from the ones affiliated with funding terrorists. As argued by Biersteker, this strategy should concentrate on encouraging charities to be more transparent, explaining what constitutes terrorist funding, establishing independent institutions to regulate or investigate charities, accrediting them or improving some indicators of trust so that donors can learn which charities can be trusted to deliver assistance to appropriate projects. (Biersteker 2007c:16-17)

³⁴ “The effort to choke off terrorists’ financing has been slow to adapt”. See “Special report: looking in the wrong places”, *The Economist*, 22 October, 2005, 82.

³⁵ Al-Barakaat was a financial and telecommunications business operating in approximately 40 countries and also the largest Somalian alternative remittance company using *hawala*. The US alleged that it was a channel for terrorist funds. Despite trial or conviction and lack of evidence of terrorist connection, its assets were frozen by the US after 9/11, and the company was forced to close, with millions in debt to depositors. In August 2002 the US government removed three Al-Barakaat businesses, yet this led to a financial crisis in Somalia. (McCulloch/Pickering 2005:479)

³⁶ As millions of immigrants rely on hawalas as a cheapest way to send money home, an over-regulation approach carries some risks. See “Leaders: The lost trail; Counter-terrorism”, *The Economist*, October 22, 2005, 13.

The concerns arising from listing and de-listing procedures have been mentioned above. However, with regard to the closing down of the formal financial sector for the trans-border movement of funds supporting terrorist activities, there is no doubt about the necessity of this regime provided due process is ensured. Some immediate and significant reforms of the listing and de-listing procedures at the UN to address the human rights concerns are important to enhance the effectiveness and the credibility of global efforts as well. Some of the important recommendations which will possibly increase international support in addressing the human rights concerns indicated in the White Paper are as follows: notification of individuals' or entities' listing directly by a UN body and provision of information relating to the procedures for exemptions and de-listing with a redacted statement of the case regarding the basis for listing; designation of a central administrative body within the Secretariat either to handle all de-listing and exemption requests or to inform individuals/entities of a listing; establishment of a biennial review of listings; founding of a review mechanism such as a procedure under the authority of the UNSC for consideration of de-listing proposals by expanding the existing Monitoring Team's mandate or appointing an ombudsman to serve as an interface with the UN or creating a Panel of Experts to hear requests, an independent arbitral panel to consider de-listing proposals, judicial review of de-listing decisions by an impartial and independent court.³⁷

In order to strengthen multilateral coordination and cooperation between international and regional organizations dealing with countering terrorism, including among the UN committees involving terrorism-related issues, some steps should be taken. (Biersteker 2007c:20) Most cooperation in the field of CFT takes place on a bilateral basis. There is a need for an international forum to provide international support and to exchange information and intelligence relating to the financing of terrorism. (Comras 2005: 10)

By understanding and accepting the linkage between criminal activities and terrorism, an inclusion of this reality into CFT policies is of crucial importance. Although they have long been considered as separate from each other, in order to raise funds terrorists use all kinds of criminal activities, and for utilitarian reasons sometimes close cooperation exists between criminals and terrorists.³⁸ (Shelly 2006:204; Hardoin/Wichard 2003:15) There is no doubt that an effective struggle against crime will contribute to CFT and also to the wider fight against terrorism. Therefore, in national strategies, CFT and the struggle against crime should be pursued simultaneously and in coordination with each other.

Since CFT is an extremely difficult and complex issue, it necessitates collective action either internationally among states or internally among governmental agencies and the private sector. An appropriate anti-money-laundering legal framework, a prerequisite for CFT, regulating the formal and informal financial systems, is vitally important in order to successfully disrupt terrorist financial flows. To build an institutional capacity to counter terrorist financing all relevant experts, such as prosecutors, regulators, custom agents, and bank employees, should be trained properly in financial intelligence collection and criminal investigation issues. (Clunan 2006: 571)

³⁷ See the White Paper for more information about these and other recommendations.

³⁸ For the same idea and examples to collaboration between criminal and terrorist organizations in South Asia and the Middle East see Rollie Lal, *International Herald Tribune*, May 24, 2004.

The international community, except the EU Member States, is willing to act only under UN designations. However the UN has focused the bulk of its CFT efforts on targeting groups and individuals. As the list making has been left to the Member States with UNSCR 1373 targeting all terrorist groups, there is a need to build a robust regime to attract the support of the international community to counter the financing of other terrorist organizations. Although the UN General Assembly has tried for more than a decade to agree upon it, the lack of an international consensus on a definition of “terrorism” has been one of the most significant constraints of the effective international and bilateral cooperation in the CFT, and the general fight against terrorism. (Oudraat 2004: 163) Therefore for an effective cooperation, there is an urgent need of an internationally accepted definition.

While cutting off the flow of funds, another vitally important point should be kept in mind to decide when, at which stage and in which way to stop the flow of money. Our aim is to fight against terrorism, and undoubtedly CFT is the one important component of this struggle. We should be cautious in freezing and stopping the money due to the fact that by following the flow of funds, to obtain intelligence and information about the concerned terrorist organization might be more important, because “linking people with numbered accounts is a powerful intelligence tool, often leading authorities to conduits between terrorist organizations and individual cells.” (Matthew 2007) This also demonstrates the significance of the close co-operation between all of the actors involved in the CFT.

Lastly, but foremost in importance, “countering ideological support for terrorism” with appropriate considerations should be included in CFT policies. Terrorist organizations legitimize their use of terrorist acts either to gain new members or to collect funds through using an ideology as a powerful motivation factor. And they craft their ideology by “interpreting, reinterpreting or misinterpreting religion and politics”.³⁹ (Gunaratna 2007: 21) While international initiatives focus on freezing the funds retained by terrorist groups on the one hand, on the other hand, more importantly, they should focus on disposal of ideological motivation factors, at least to cut off some of the voluntary donations at their source.

Conclusion

Since the attacks of 9/11, some important steps have been taken by the international community on CFT. To an extent, some amounts of funds used by terrorists have been seized and confiscated, many charities have been closed, and most of the states signed and ratified the UN Convention. However, as it is illustrated above, international CFT initiatives are very far from being accepted as successful. While terrorist organizations are easily demolishing barriers and adapting themselves into the new conditions continuously, it is difficult to come to the same conclusion for our strategies in the CFT. Unfortunately terrorists are a step ahead of international and national strategies.

In order to generate funds that are difficult to track through the current systems, terrorists have heavily relied on criminal activities, the utilization of domestic sources, and increasingly cash

³⁹ For eight policy considerations to counter the ideological support for terrorism suggested by Herd and Aldis see (Herd/Aldis 2007:246-252).

couriers rather than paper trail. The current CFT tools, heavily focusing on formal financing systems, need to be adapted to new changes in the financing of global terrorism, but not remaining a step behind of terrorists, and effectively implemented with a close cooperation either between states or different domestic public and private institutions within a state, and inter-governmental organizations as well.

Finally, for a more effective CFT, balancing the rights of individuals with the good of the state, our initiatives need to be undertaken in a manner consistent with the rule of law and in conjunction with the enhanced international and bilateral cooperation and intelligence sharing, better global police and judicial cooperation, the efforts to address the root causes of terrorism and to disrupt the ideological support for terrorism.

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